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CANADA'S JUSTICE SYSTEM-NEW DIRECTIONS

NOTES FOR AN ADDRESS BY THE HONOURABLE MARTIN CAUCHON, MINISTER OF JUSTICE AND ATTORNEY GENERAL OF CANADA

BEFORE
THE CANADIAN BAR ASSOCIATION
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CHECK AGAINST DELIVERY

Thank you for that kind introduction. Like many of you, I am happy to have the chance to get out of the office and forget my daily routine for a moment and examine some issues faced by Canada's justice system. Also, I feel that there is no forum better than today's to discuss these issues.

It is a privilege for me to address you today. The CBA, as the national association representing Canada's legal profession, has had a long and constructive relationship with the Department of Justice. Your thoughtful input on our initiatives has enabled us to achieve more effective laws and policies. That is why it is so appropriate that I take the opportunity of addressing you to begin to lay out my priorities as Minister of Justice.

When the Prime Minister entrusted me with the Justice portfolio in January, I immediately tried to define my own ideas of justice and closely considered the key role that our justice system plays in the life of our country.

The justice system reflects fundamental Canadian values like democracy and the rule of law, due process and fairness, respect for diversity, the protection of the most vulnerable in society, and the competitiveness of the Canadian economy.

Therefore, we need to address what changes to the justice system we require in order to reflect these values.

Before getting into my priorities, I want to make one essential point: Canada's justice system is a shared responsibility among all levels of government, the courts, citizens and communities, the legal profession, the police, and the business community.

This means that in order to succeed, we need to engage these partners in particular initiatives and be clear on the responsibilities that each of them, including the Federal Government, is being asked to accept.

While there are a large number of issues that we could address, I believe that we need to collectively focus on three priority areas in order to foster a fair and effective justice system.

These are:

- Safe, secure communities;

- Accessible, inclusive justice for all Canadians; and
- Governance.

First, let's take a look at our need for safer communities:

Canadians cherish their peaceful communities. Our sense of safety and security forms the very core of our quality of life. Clearly, the justice system must serve to promote and protect the safety and security of all Canadians.

But how do we achieve this?

The traditional approach to crime reduction has been to punish the guilty. The harsher the punishment, the argument goes, the fewer the criminals.

Criminal prosecution is our most coercive instrument. There may be more effective ways to achieve positive social outcomes. For example, as a society we must question our motivation when we devote so many of our precious legal resources to the prosecution of cannabis offences.

Do these prosecutions improve the safety of our communities?

Please don't misunderstand me--Canada has no plans to legalize marijuana. I believe endorsing marijuana use might inflict harm on society and lead to greater problems.

Our policy on illegal drugs will continue to follow a balanced approach, addressing both demand and supply. But I believe it's time for an open discussion about modernizing the criminal-justice system in this regard.

However, to achieve the goal of safer communities, we also must ensure that we are effectively protecting the most vulnerable members of society, such as children. The fight against child pornography, for instance, is one that I follow closely. The *Criminal Code* already includes some of the toughest laws against child pornography in the Western world.

The spread of child pornography presents a unique challenge to our traditional approach to justice.

The new *Criminal Code* provisions, which came into effect last July 23rd, create new offences to target criminals who use the Internet to lure and exploit children for sexual purposes and to transmit, make available, export and intentionally access child pornography.

These new provisions will also allow courts to order the deletion of child pornography posted on Canadian computer systems.

The recent decision of the British Columbia Supreme Court in the *Sharpe* case has received considerable public attention. Many of these issues are very complex, such as the issue of artistic merit and its availability as a defence for child-pornography offences.

We are closely reviewing these issues, as well as other child-victimization issues, with a view to bringing proposals forward in the fall. We will be eager to hear the CBA's views regarding these proposals.

Year in and year out, the Department of Justice has been very active in the criminal-law field. Occasionally, however, there is a need for an opportunity to take stock on where we are going. I think the time may have come for such a stock-taking in relation to criminal law.

Twenty years ago, an ambitious document was published under the auspices of then-Minister of Justice and Attorney General, the Right Honourable Jean Chrétien.

Criminal Law & Canadian Society outlined a bold vision of criminal-law reform. The paper argued that criminal law, as our most powerful instrument of social control, should be used only as a last resort.

Canadian society has experienced profound change during the past two decades, and I believe it is appropriate to ask ourselves whether we are satisfied with the overall functioning of our criminal-justice system.

We should ask ourselves the following questions:

1. Are we really using criminal law as an instrument of social and economic policy? Do we use it too often?
2. Could the criminal-justice system be more equitable? Could the problem of the disproportionate representation of Aboriginal people and people from other minority groups in the criminal justice system be partially corrected by reforms of the criminal justice system?
3. Within our existing constitutional framework, what can be done about the increasing costs and complexity of the criminal justice system?

These are some of the questions we need to ask to spark a wider discussion about the fundamental elements of our criminal-justice system. To launch this discussion, I am pleased to announce I will be chairing a roundtable on these issues in the fall, and I intend to hear the views of Canadian involved I various aspects of criminal justice.

I believe that a reformed criminal-justice system must be both accessible and inclusive to be effective.

In fact, accessibility and inclusiveness lie at the heart of our **entire** justice system. We expect our legal system to operate fairly, and we aim for the objective of equal access.

A good example is the accessibility to a justice system in Canada's two official languages. The recent *Legislative Instruments Re-Enactment Act* is an important step in responding to these concerns.

The Act ensures that legislative instruments meet the language requirements of the Constitution.

The Department of Justice recently completed a study on the ability of our courts to provide services in both official languages. This study revealed that we still have a long way to go in various regions of the country.

The only realistic solution requires the co-operation of the Government of Canada, the provinces and territories, judges and counsels, provincial bar associations and law faculties.

Achieving effective access to justice may well require more than modernizing legislation. This is certainly the case with family-law reform.

Recent research suggests that the stress of family breakdown can have a devastating impact on children. Children in single-parent homes are more at risk of experiencing financial and emotional hardships.

If we truly believe in inclusive justice, we must find a way to help more families in crisis and ensure children receive the support they need.

Services often make the biggest difference in the lives of families going through a painful break-up. Counselling, mediation, courses for divorcing parents--I believe access to these services is crucial if we hope to minimize the damage often caused by separation and divorce.

Changes to language in the *Divorce Act* may be important in sending the message to the courts, lawyers and parents that the overarching goal we wish to achieve is to ensure that the best interests of the child are paramount.

Moreover, successful outcomes in family law require effective adjudication. Unified Family Courts are well-recognized mechanisms for resolving family-law matters--in a single forum exercising comprehensive family-law jurisdiction under both federal and provincial law, employing simplified procedures in a user-friendly environment, and presided over by specialist judges.

Over time, it would be an objective to work with the provinces and territories to expand the availability of Unified Family Courts.

What is the appropriate balance of legislation, services and effective adjudication to achieve an optimal outcome in the family-law area?

I will be bringing all these issues to the table to be discussed with my Cabinet colleagues this fall.

Another issue of accessibility and inclusiveness impacts Aboriginal people. Canada's justice system faces challenges when it comes to the equitable treatment of Aboriginal people.

Over the past five years, the Aboriginal Justice Strategy has fostered a new sense of optimism in First Nations, Inuit and Northern communities. The strategy implements justice programs that meet local needs and reflect local traditions. Many of the programs have been tremendously successful, improving access, reducing the rate of repeat offenders and strengthening communities.

Typically, these programs borrow elements of Aboriginal traditions, such as sentencing circles. As a result, people feel that the justice system is more responsive to their needs. The success of these programs clearly demonstrates the benefits of aligning our system of justice with the needs and values of the citizenry.

For many Canadians, accessing the justice system is only possible through legal-aid services.

A strong legal-aid system is one of the pillars supporting Canada's system of justice.

We recognize that there are mounting pressures on the legal-aid system which, if left unchecked, could compromise the very integrity of Canada's justice system. This is supported by CBA reports on the increasing number of people in the courts without legal representation, and the declining number of lawyers delivering legal aid.

We share the concerns of the CBA and others with regard to the growing pressures on legal aid. Last year and this year, the Government of Canada provided an additional $20 million per year, over and above our existing $82 million in contributions to the jurisdictions for criminal legal aid.

In addition, over the last year-and-a-half, we have been working with our provincial and territorial partners to assess the level of unmet needs and to develop together a long-term strategy for legal aid.

The findings from our research--as well as input from interested groups such as the CBA--will help inform the Government of Canada as we develop our legal-aid program in partnership with the provinces and territories.

While the provinces deliver the current programming model, we would like to work with them on ensuring that Federal Government contributions to legal aid help promote priorities such as access to justice for Aboriginal people and visible minorities, and assist those requiring legal aid in the official language of their choice.

Simply put, a well-functioning legal-aid system is an indispensable element for providing an accessible and inclusive justice system. Therefore, we, the provinces and the bar need to make renewal of legal aid a priority.

The final issue I want to address is governance. Canadians want to be more involved in fundamental decisions that effect them; they want more participation; and they want greater transparency.

Let me give you three current examples of what I mean. I will start with the issue of same-sex marriage.

I am not going to talk to you today about the pros and cons of recognizing same-sex marriage. Rather, I am going to ask you to think about where and how decisions on this important question of social policy should be made. Clearly, there are legal questions and these have been placed before the courts. But this is more than a legal issue.

This is a fundamental issue for society and I believe that the best place to discuss how Canadians wish to address this is through Parliament. In fact, I think that it is the responsibility of Parliament and government to take leadership in this area.

That is why last week, I announced that I am referring the matter to a Parliamentary committee. We are asking the Standing Committee on Justice and Human Rights to hear from Canadians, study potential policy options, and report back to the House of Commons. I think it is important for the committee to do this work quickly.

To assist the committee, I propose that the Department of Justice prepare a discussion paper.

A second issue is the *Access to Information Act*. This Act promotes the principle of greater transparency in government while ensuring that legitimate confidential information is protected.

It has been 20 years since the law was passed and a few months ago, the Access to Information Review Task Force released its final report following two years of comprehensive study. The report, *Access to Information: Making it work for Canadians*, while concluding that the law is fundamentally sound, contains 139 recommendations that take a uniquely integrated approach to reform by addressing legislative, administrative and cultural issues.

Departmental officials are studying the report and I am consulting my Treasury Board colleague to develop policy and legislative options for consideration in the near future.

The final governance issue I want to address touches upon corporate governance. A year ago we probably would not have had this subject on our radar, but now 'Enron' and 'WorldCom' have become household words, in Canada as well as the United States. In fact, a recent Ipsos-Reid poll revealed that 55 per cent of Canadians have lost confidence in the stock market because of these huge scandals.

Let's be clear: Canada--so far--has been relatively untouched by such major corporate scandals, and I am not suggesting that our system of regulating corporations and stock markets is seriously deficient. But people are asking if these cases could happen here, and would we be ready to deal with them.

I believe we have to be vigilant. As we identify more clearly how and why these scandals occur, the government must be ready to act--if that is the appropriate thing to do. It may be that adjustments can be made by the private sector which will bring about the changes needed to prevent re-occurrences.

I can tell you that the Government of Canada is monitoring very closely the developments in the United States and here.

Criminal law is one area that may deserve careful attention. As Justice Minister, I want to determine whether there are gaps in the law in relation to corporate fraud.

The Code already contains very useful provisions relating to both fraud in general, and in reference to the manipulation of stock market prices. And other legislation, such as the provincial securities acts and the *Canada Business Corporations Act*, also set out particular offences and penalties that apply to corporations and actors in the financial system.

But in collaboration with my colleagues, the Ministers of Finance and of Industry, I want to carefully review the role of our criminal law in deterring and punishing corporate fraud, and to plug any gaps that may be identified in the process.

I also want to work with the provinces in this effort to obtain their perspectives on the investigation of corporate fraud, and ways to improve our capacity to prosecute such offences. This is a multi-faceted problem, so it is essential that any steps taken by the criminal justice system--if needed--complement measures taken by the private sector as well as the enforcement and prevention efforts of securities commissions and other regulators.

So, these are just some of my priorities and challenges in the area of justice that we must meet in the near future. The Canadian justice system is considered to be one of the best in the world; therefore, we must continue to improve it.

Canadians want an effective justice system, and they deserve it. They want a justice system that reflects Canadian values and that establishes a fair balance between individual rights and the interests of society.

I am grateful for the opportunity to address you. I look forward to hearing your ideas on these important issues, and to working with you in this collaborative effort.

Merci de votre attention. Thank you.

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